

### **REMARKS/ARGUMENTS**

The Applicants have reviewed the Advisory Action mailed 14 August 2009 stating that the Applicants' 27 July 2009 amendment will not be entered. The Applicants respectfully request reconsideration of the Advisory Action, and entry of their 27 July 2009 amendment, for at least the following reasons.

#### **Status of the Claims**

It should be noted upfront that the Advisory Action, in block 7, does not include a complete listing of the status of all of the claims. That block incorrectly indicated the following status for the claims:

"Claim(s) allowed: \_\_\_\_.  
"Claim(s) objected to: \_\_\_\_.  
"Claim(s) rejected: 1-10, 15-23 and 34  
"Claim(s) withdrawn from consideration: \_\_\_\_."

However, following the 27 April 2009 final Office action, and before entry of the Applicants' 27 July 2009 response to that final Office action, the correct status of the claims was as follows:

Claim(s) allowed: \_\_\_\_.  
Claim(s) objected to: **24-33**.  
Claim(s) rejected: 1-10, 15-23 and 34  
Claim(s) withdrawn from consideration: **11-14 and 42-47**.

Thus, claims 1-34 and 42-47 were pending in the application, claims 11-14 and 42-47 stood withdrawn from consideration, and claims 35-41 had been canceled.

#### **Applicants' 27 July 2009 Response**

In their 27 July 2009 response to the 27 April 2009 final Office action, the Applicants did three things:

1. Rewrote "objected to" claims 24-33 per the suggestion on page 5 of the 27 April 2009 final Office action to make them allowable;
2. Amended only the dependency of previously rejected claims 2-10, 15-21, and 34 so they depend from allowable claims per item 1; and
3. Requested rejoinder of some of the claims withdrawn in response to the second and third restriction requirements, along with the amendment of the dependency of these claims so they depend from allowable claims per item 1.

The above three aspects of the Applicants' 27 July 2009 amendment are explained in the following three sections.

### **The Rewritten Claims**

On page 10 of their 27 July 2009 Amendment, the Applicants explained the rewritten claims as follows:

"The Applicants have rewritten dependent claim 24 as new independent claim 48, which includes all of the limitations of claim 24 and base claim 1. There were no intervening claims between 1 and 24. Claim 24 has been canceled.

"The Applicants have rewritten dependent claim 25 as new independent claim 49, which includes all of the limitations of claim 25 and base claim 1. There were no intervening claims between 1 and 25. Claim 25 has been canceled. Claims 26-31, which previously depended directly or indirectly from claim 25 have been amended to depend directly or indirectly from new independent claim 49.

"The Applicants have rewritten dependent claim 32 as new independent claim 50, which includes all of the limitations of claim 32 and base claim 1. There were no intervening claims between 1 and 32. Claim 32 has been canceled. Claim 33, which previously depended directly from claim 32 has been amended to depend directly from new independent claim 50."

27 July 2009 Amendment & Response to Final Rejection, p. 10. Thus, the Applicants believe that previously "objected to" claims 24-33 are now allowable as represented in the Applicants' 27 July 2009 amendment in the following independent/dependent claims groups:

- 48/
- 49/26-31
- 50/33

Since the Applicants merely rewrote allowable claims 24-33 as suggested by the final Office action, they respectfully submit that their amendments should be entered, and claims 26-31, 33, and 48-50 should be allowed.

### **The Amended Claims**

As noted above, the following claims stood rejected in the 27 April 2009 final Office action: 1-10, 15-23, and 34. In their 27 July 2009 amendment, the Applicants canceled

claim 1, 22, and 23; and the Applicants amended only the dependency of remaining claims 2-10, 15-21, and 34 so these claims would depend from one or more of the now allowable independent claims 48-50. In particular, the Applicants amended only the dependency of the following claims to depend from allowable independent claims 48-50: 2, 3, 6, 9, and 34. The other claims (namely, claims 4, 5, 7, 8, 10, 15, 16, 17, 18, 19, 20, and 21) remained unchanged. In fact, claims 4, 5, 10, 15, 16, 17, 18, 19, 20, and 21 remain as originally filed. Claim 7 was substantively amended only once since it was filed in the original application (claim 7 was amended in the Applicants' 28 May 2008 response). Further, only the dependency of claim 8 has been changed since it was filed in the original application (claim 8 was amended in the Applicants' 1 February 2009 response to the third restriction requirement).

Any amendments made to previously rejected claims 2-10, 15-21, and 34 are analogous to the dependency amendments the Applicants made to claims 26, 28-30, 31, and 33 discussed in the last section. These claims were not substantively amended; and, since these claims were never withdrawn and the vast majority of these claims remain as originally filed, the Applicants respectfully submit that no "new search" is required and that any burden on the Examiner to consider these claim amendments is minimal at this point in the prosecution since the Examiner has already consider these claims and the Applicants have only amended them to depend directly or indirectly from an allowable base claim. Thus, the Applicants respectfully request that the proposed amendments to rejected claims 2-10, 15-21, and 34 be entered and that these claims be allowed.

### **The Rejoinder Claims**

This application has received three restriction requirements during the prosecution of this application:

1. The first appeared in the 31 December 2007 Office action.
2. The second appeared in the 13 August 2008 Office action.
3. The third appeared in the 6 January 2009 Office action.

The first restriction requirement concerned what the Examiner asserted were two separate inventions – the first directed toward a sanitary cove base, and the second directed toward molded corners. In response, the Applicants elected to prosecute the claims directed toward the sanitary cove base, and canceled the claims directed toward the molded corners (i.e., claims 35-41). The Applicants have never sought to rejoin canceled claims 35-41.

The second restriction requirement concerned what the Examiner asserted were four patentably distinct species of the sanitary cove base. The species identified had different

shaped top surface (see, for example, element 36 in Fig. 8, element 36' in Fig. 9, and element 36'' in Fig. 10) and/or hollow channels (see elements 18, 46, 48, 50, 66, 68, 70, 72, 74, 76, 78 in the figures). In response to the second restriction requirement, the Applicants elected the species represented by Fig. 1 having a flat top surface and hollow channel. Thus, the Applicants chose to prosecute claims 1-10, 15-34, and 43-47; and withdrew remaining claims 11-14 and 42.

The third restriction requirement concerned what the Examiner asserted were two additional patentably distinct species of the sanitary cove base. The first identified specie has a sanitary sweep (see element 42 in the figures) and the second identified specie does not have a sanitary sweep. In response to the third restriction requirement, the Applicants elected the species having a sanitary sweep. Thus, the Applicants chose to prosecute claims 1-10 and 15-34; and withdrew remaining claims 43-47.

At the end of the three restriction requirements, the Applicants had elected to prosecute claims 1-10 and 15-34 directed toward the following:

- a sanitary cove base;
- where the sanitary cove base has a flat top surface and hollow channels; and
- where the sanitary cove base has a sanitary sweep.

Thus, as noted above, as of the final Office action, the following claims stood withdrawn from consideration: 11-14 and 42-47.

As correctly noted in the second and third restriction requirements, "[u]pon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141." 13 August 2008 Office action, at p. 3, ll. 16-18; 6 January 2009 Office action, at p. 3, ll. 17-19. In this vein, the Applicants are (via their 27 July 2009 filing) seeking to rejoin claims 11-14 and 44-47 as depending from allowable generic claims 48-50. The Applicants have canceled remaining withdrawn claims 42 and 43. As discussed above, allowable independent claims 48-50 are directed toward a sanitary cove base that has hollow channels and a sanitary sweep. The particular shape of the top surface is not part of allowable independent claims 48-50, which are generic as to the shape of the top surface.

Thus, the Applicants respectfully request (i) that their proposed amendments to claims 11-14 and 44-47 to make them depend from allowable generic claims 48-50 be entered and (ii) that the Applicants' request to rejoin claims 11-14 and 44-47 be granted.

### **New Claim 51**

New dependent claim 51 is most similar to dependent claim 45. However, if the Examiner still objects to this new claim, please cancel this claim to permit this application to go to issuance on the remaining claims.

### **Conclusion**

For at least the reasons provide above, the Applicants believe that full entry of their 27 July 2009 amendment after final does not "raise new issues that would require further consideration and/or search." The Applicants, therefore, respectfully request reconsideration and withdrawal of the 14 August 2009 Advisory Action so the claims 2-21, 26-31, 33, 34, and 44-51 may move to issuance. If the Examiner has any further questions, he is encouraged to contact the undersigned attorney.

The Applicants believe that no fee is required for this filing. If, however, a fee is required, the Commissioner is hereby authorized to charge any required fee associated with this filing to deposit account no. 502885.

Respectfully submitted electronically this 8th day of September 2009.

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